Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition of Qwest Services Corporation for	)	
Forbearance From the Prohibition of	)	CC Docket No. 96-149
Performing Operating, Installation, and	)	
Maintenance Functions	)	
Under Section 53.203(a)(2)-(3) of the	)	
Commission's Rules	)	

PETITION FOR FORBEARANCE

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PETITION FOR FORBEARANCE

Qwest Services Corporation ("QSC") on behalf of its subsidiaries, Qwest LD Corp. ("QLD"), Qwest Communications Corporation ("QCC"), and Qwest Corporation ("QC") (collectively referred to as "Qwest") and pursuant to Section 10 of the Communications Act of 1934, as amended (the "Act"),[1] respectfully submits this Petition requesting that the Federal Communications Commission ("Commission") exercise its authority to forbear from applying Section 53.203(a)(2) and (3) of the Act which prohibit a Bell Operating Company ("BOC") and its Section 272 affiliate from performing any "operating, installation, or maintenance functions" ("OI&M") for each other.[2]

A grant of this Petition would allow Qwest to compete more effectively in the interLATA long distance market by streamlining service to customers and reducing Qwest's OI&M costs.

I. INTRODUCTION AND SUMMARY

One of the pro-competitive provisions Congress included in the Act is Section 10, which requires the Commission to forbear from applying any regulation or provision of the Act if the Commission determines that: (1) enforcement is not necessary to ensure that rates and practices

[1] 47 U.S.C. § 160.

[2] 47 C.F.R. § 53.203(a)(2) and (3).

are just, reasonable, and not unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.[3] In making the public interest determination, Section 10 requires that the Commission consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition.[4] The statutory imperative created by Section 10 reflects Congress's reasoned judgment that competition, not government regulation, should guide companies' behavior in competitive telecommunications markets.

In the sections which follow, Qwest demonstrates that the Commission's OI&M rules impose unnecessary costs on both Qwest and its customers and unnecessarily lengthen installation and repair times. The Commission's existing OI&M rules, Section 53.203(a)(2) and (3), prohibit QC (*i.e.*, the BOC) from performing OI&M for its Section 272 affiliate and vice versa. The Commission adopted these rules shortly after the passage of the Act prior to approving any BOC Section 271 applications to provide interLATA service. The Commission's stated purpose in adopting its OI&M rules (in addressing the statutory requirement that BOC separate affiliates "operate independently") was to prevent improper cost allocation and discrimination. Since then, changes in the Commission's price cap system have all but eliminated any possibility of cross-subsidization at the federal level. Similarly, ongoing nondiscrimination requirements contained in Sections 272(c), 272(e) and other Sections of the Act (*e.g.*, Sections 201, 202 and 251) provide more than adequate protection against unreasonable discrimination and ensure that BOCs will not be able to favor their Section 272 affiliates at the expense of other customers and competitors.

[3] 47 U.S.C. § 160(a).

[4] 47 U.S.C. § 160(b).

Clearly, then, the OI&M rules are not necessary to prevent cross-subsidization or unreasonable discrimination. No purpose is served in continuing to impose these requirements on BOCs and their Section 272 affiliates -- other than burdening BOCs in the provision of interLATA service. Enforcement of the Commission's existing OI&M rules is not necessary to protect consumers or to ensure that rates and practices are just and reasonable and not unreasonably discriminatory. Furthermore, forbearance would serve the public interest. Accordingly, the Commission should find that Section 10's requirements have been satisfied and forbear from applying its OI&M rules to QC and its Section 272 affiliate.

II. BACKGROUND

A. Section 272 Of The Act And The Commission's Regulations

Section 272 of the Act contains separate affiliate requirements that apply to BOC provision of interLATA long distance service after a BOC has received Section 271 authorization to provide service in a given state. Section 272(b)(1) requires that the separate affiliate providing interLATA service shall "operate independently" from the BOC.[5] Neither Section 272 nor any other part of the Act provides guidance as to how the term "operate independently" should be interpreted by the Commission.[6]

In adopting rules implementing Section 272(b)(1) of the Act, the Commission stated that "[T]he requirements that we adopt to implement section 272(b)(1) are intended to prevent a BOC from integrating its local exchange and exchange access operations with its section 272 affiliate's activities to such an extent that the affiliate could not reasonably be found to be

[5] 47 U.S.C. § 272(b)(1).

[6] "The Act does not elaborate on the meaning of the phrase 'operate independently.'" *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd. 21905, 21976 ¶ 147 (1996) ("*Non-Accounting Safeguards Order*").

operating independently, as required by the statute."[7] On this basis, prior to approving any Section 271 applications, the Commission concluded that operational independence precluded: (1) joint ownership of transmission and switching facilities by a BOC and its Section 272 affiliate; (2) joint ownership of land and buildings where transmission and switching facilities are located; and (3) a BOC or BOC affiliate performing OI&M for a Section 272 affiliate or the Section 272 affiliate performing OI&M for the BOC.[8] These constraints are contained in Section 53.203(a) of the Commission's rules.[9] In adopting these rules, the Commission was primarily concerned with preventing discrimination and improper cost allocation (*i.e.*, cross-subsidization).[10] Despite these concerns, the Commission "declined to read the 'operate independently' requirement to impose a prohibition on all shared services."[11] In its *Third Order on Reconsideration* the Commission upheld its "operate independently" requirements and denied petitions seeking changes.[12]

Since the adoption of OI&M restrictions and other rules on operational independence of Section 272 affiliates, the Commission significantly reformed its access charge regime and, in doing so, all but eliminated any possibility that cost misallocations could be reflected in interstate access charges. The CALLS Plan and earlier access charge modifications significantly reduced the cost of exchange access for interexchange carriers ("IXCs") and severed the

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[7] *Id.* at 21981-82 ¶ 158.

[8] *Id.*

[9] 47 C.F.R. § 53.203(a). The OI&M prohibitions are contained in Section 53.203(a)(2) and(3).

[10] *Non-Accounting Safeguards Order*, 11 FCC Rcd. at 21981-84 ¶¶ 158-63.

[11] *Id.* at 21986 ¶ 168.

[12] *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, *Third Order on Reconsideration*, 14 FCC Rcd. 16299, 16305 ¶ 8 (1999).

remaining links to cost-based regulation (*i.e.*, sharing and the low-end adjustment).[13] The expansion of price cap/incentive regulation plans at the state level also has minimized the risk that any cost misallocations would be reflected in intrastate rates.[14] Thus, any protection that the OI&M restrictions may have provided against the possibility of cost misallocation is no longer necessary given recent access charge reforms.[15]

B. Section 10 Of The Act

Section 10 of the Act requires that the Commission "shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets" if the Commission finds that:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just reasonable and are not unjustly or unreasonably discriminatory;

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[13] *See In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45*, 15 FCC Rcd. 12962 (2000); *In the Matter of Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262*, 12 FCC Rcd. 16642 (1997).

[14] Thirteen out of the fourteen states where Qwest is an incumbent local exchange carrier ("LEC") have adopted some form of price regulation in place of traditional rate of return regulation.

[15] Prices of interLATA services are set by the competitive market. The Commission has found that neither any IXC nor BOC 272 affiliate has market power to control prices. Therefore, even if there were cost misallocations by a BOC or an IXC, they should not have an impact on market prices. *See In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, *Order*, 11 FCC Rcd. 3271 (1995); *see also In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, *Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61*, 12 FCC Rcd. 15756, 15815-17 ¶¶ 103-04 **(**1997) ("*LEC Classification Order*").

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.[16]

In making its public interest determination, Section 10 requires that the Commission consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.[17]

Forbearance under Section 10 is not "discretionary" -- it is "mandatory" once the Commission determines that the above conditions have been met.[18] The only restriction on the Commission's forbearance authority is contained in Section 10(d) which limits the Commission from forbearing from applying Sections 251(c) and 271 until those requirements have been fully implemented.[19] Section 272 is not mentioned in either Section 10(d) or any other part of Section 10.

C. Qwest's Arrangements For Providing InterLATA Service

Qwest has received Section 271 authorization to provide interLATA long distance service in 13 of its 14 in-region states.[20] Currently, Qwest is providing voice long distance services via resale to consumer and small business customers in these states through QLD, its Section 272 affiliate. QLD is a wholly-owned subsidiary of QSC, and a switchless reseller that was formed when QCC, Qwest's out-of-region long distance provider, was unable to certify that

[16] 47 U.S.C. § 160(a).

[17] 47 U.S.C. § 160(b).

[18] Forbearance is not limited to specific provisions of the Act but also includes regulations that the Commission has promulgated.

[19] 47 U.S.C. § 160(d).

[20] On September 4, 2003, Qwest filed its Section 271 Application for authorization to provide interLATA service in Arizona.

its financial statements were in compliance with GAAP and satisfied Section 272(b)(2) of the Act.

Qwest intends to designate QCC as its Section 272 affiliate and provide a wide variety of in-region interLATA services using its own facilities as soon as it completes its financial restatement.[21] Once Qwest has restated its past financial results -- which should occur in the very near future -- and QCC has satisfied all Section 272 requirements, Qwest intends to move QLD's existing customers to QCC.

Under QLD's existing resale arrangements for providing interLATA long distance service, QLD incurs very few OI&M costs. As such, forbearance from applying the Commission's OI&M restrictions[22] will save QLD little, if any, money since QLD does not perform any OI&M functions. However, the situation will be quite different for QCC once it is designated as Qwest's Section 272 affiliate. As discussed below, forbearance from the OI&M rules would allow QCC to reduce its costs and to better serve in-region customers by streamlining OI&M functions.

Currently, QCC provides interLATA service out-of-region, focusing on large business and carrier customers. QCC serves a small number of residential customers. While QCC provides OI&M functions for its large business and carrier customers, it has out-sourced most of these functions for its out-of-region residential customers. Once QCC is designated as Qwest's 272 affiliate, it will need to establish mass market OI&M methods and procedures in order to

[21] Qwest differs from other RBOCs in that prior to its merger with U S WEST, Inc. on June 30, 2000, QCC provided a full range of interLATA services within U S WEST Communications' (now QC's) 14-state service area. The Commission required Qwest to divest itself of its in-region interLATA business as a condition of approving the Qwest/U S WEST merger. However, QCC's nationwide network still traverses QC's service area even though it does not currently serve any interLATA in-region customers.

[22] 47 C.F.R. § 53.203(a)(2)and (3).

serve Qwest's in-region interLATA long distance customers (which are primarily residential and small business customers). Also, QCC intends to begin providing a wide array of sophisticated interLATA services to large business and government customers within the 14-state region. Forbearance from applying the OI&M rules would allow QCC to serve both mass market and large business and government customers in the most efficient and cost effective manner, as discussed below.

ARGUMENT

III. FORBEARANCE WOULD ALLOW QWEST TO IMPROVE SERVICE AND PERFORM OI&M FUNCTIONS IN THE MOST COST EFFICIENT AND CUSTOMER-FRIENDLY MANNER

The existing OI&M rules both impair Qwest's ability to serve its customers and impose unnecessary costs on Qwest in the provision of in-region interLATA service. As Pamela Stegora Axberg, Qwest's Senior Vice-President National Network Services ("NNS"), points out in her attached declaration, the OI&M restrictions affect customer service in numerous ways including: (1) requiring at least two sets of procedures and workforces to install, design (*i.e.*, circuit design) and test services that customers order; (2) restricting a single Qwest entity from providing end-to-end network monitoring; and (3) requiring duplicate systems, procedures and work groups to identify and repair network problems causing service outages and interruptions. None of these effects has a positive impact on Qwest's customers.

At a minimum, the OI&M restrictions result in delays in installing and repairing customers' services. In addition to increasing Qwest's costs, delays may impose unnecessary costs on Qwest's customers. This is particularly true with respect to large business and government customers that have numerous locations and purchase a wide variety of sophisticated services. Their primary concern is service reliability with a minimum of downtime. These

customers want a single point of contact for service problems and fast response times in addressing problems. The current OI&M restrictions unnecessarily complicate coordination of customer service activities between the QC, the BOC, and Qwest's Section 272 affiliate and lengthen installation and trouble response times. In fact, Ms. Stegora Axberg believes that the benefits accruing to Qwest's interLATA customers from the elimination of the OI&M restrictions are more important than the direct cost savings to Qwest itself.[23]

IV. THE COMMISSION HAS THE AUTHORITY TO FORBEAR FROM APPLYING THE OI&M RULES

There should be no question that the Commission has the authority to forbear from applying the OI&M rules that were promulgated in implementing Section 272(b)(1) -- that required BOC separate affiliates to "operate independently" from the BOC. In adopting Section 10 of the Act, Congress granted the Commission broad authority to forbear from applying any regulation or any provision of the Act, with few exceptions, if certain pro-competitive conditions were met. Indeed in Section 10, Congress did not give the Commission the discretion to forbear -- but required the Commission to forbear if it found that the conditions in Section 10(a) were satisfied. The only limitation on the Commission's forbearance authority is found in Section 10(d) which prohibits the Commission from forbearing from applying the requirements of Sections 251(c) and 271 until these requirements have been fully implemented.

[23] "The benefits to Qwest's interLATA customers from elimination of the OI&M restrictions are even more important than the direct cost savings to Qwest. Among other things, these benefits include: 1) the ability of Qwest to provide single integrated end-to-end communications solutions for customers; 2) a reduction in the number of "touchpoints" (contact points) necessary to meet customer requirements – thereby reducing installation and repair times for customers; 3) designation of a single number for customers to contact for service problems; 4) the elimination of duplicate testing by separate Qwest entities (*i.e.*, QC and QCC) of the same interLATA services; 5) greater likelihood that network capacity will be available when and where customers need it; and 6) an overall enhancement in the quality of service provided to Qwest's interLATA customers." *See* Declaration of Pamela J. Stegora Axberg at ¶ 6.

Neither Section 10(d) nor any other provision of Section 10 mentions Section 272 or the Commission's rules adopted in implementing it [Section 272]. Simply put, it requires an unwarranted "leap of faith" to find any limitation on the Commission's authority to forbear with respect to Section 272. However, that has not stopped BOC critics from "discovering" such a limitation in Section 271(d)(3) and claiming that it is incorporated into Section 10(d) by reference.[24] Section 271(d)(3) has a single statutory reference to Section 272 that directs the Commission not to approve an authorization to provide interLATA long distance service in a given state unless it finds that "the requested authorization will be carried out in accordance with the requirements of section 272."[25]

The mere mention of Section 272 in a subsection of Section 271 -- albeit an important subsection that provides the Commission with direction on evaluating Section 271 applications prior to approval -- cannot be a justifiable basis for expanding Congress's Section 10(d) limitation to include both Section 272, itself, and any rules adopted in implementing Section 272. Congress created a limited exception in Section 10(d) to the broad scope of the Commission's forbearance authority contained in the rest of Section 10. This exception cannot be expanded through artful interpretations to include other sections of the Act (*e.g.*, Section 272) let alone Commission rules drafted after the passage of the 1996 Act (*e.g.*, § 53.203(a)(2) and (3)).[26]

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[24] *See* AT&T comments on BellSouth's Petition for Forbearance, CC Docket No. 96-149, filed Aug. 6, 2003 at 3-4; MCI comments at 1-2 in the same proceeding.

[25] 47 U.S.C. § 271(d)(3)(B).

[26] In a different factual context, the Supreme Court stated that: "When Congress provides exceptions in a statute, it does not follow that courts have authority to create others. The proper inference, and the one we adopt here, is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth." *See United States v. Roy Lee Johnson*, 529 U.S. 53, 58 (2000).

Despite the claims of BOC opponents, the Commission has not directly addressed the question of whether it has the authority to forbear "from application of the requirements of Section 272 to any service for which the BOC must receive prior authorization under Section 271(d)(3)." While the then Common Carrier Bureau ("Bureau") appeared to find that the Commission did not have the authority to forbear with respect to such services in its *Order* granting BOC forbearance petitions related to the provision of E911 service,[27] that language is mere dicta because the Bureau neither had the authority to make such a finding[28] nor was such a

[27] "Based on our interpretation of the Communications Act provisions, we conclude, as AT&T and MCI argue that prior to their full implementation we lack authority to forbear from application of the requirements of section 272 to any service for which the BOC must obtain prior authorization under section 271(d)(3). For the reasons discussed below, we determine, however, that the MFJ Court had authorized the BOCs to provide E911 services prior to enactment of the 1996 Act and that we, therefore, have authority to forbear from application of the requirements of section 272 to those services." *In the Matter of Bell Operating Companies; Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, Memorandum Opinion and Order*, 13 FCC Rcd. 2627, 2641 ¶ 22 (1998) ("*E911 Forbearance Order*").

[28] In issuing its *E911 Forbearance Order* the Bureau was acting under delegated authority. Under the Commission's rules, the Bureau does not have the authority "to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines." *See* 47 C.F.R. § 0.291(a)(2). Clearly, the question of whether the Commission has the authority to forbear from the application of Section 272 requirements to any service for which the BOC must obtain prior authorization under Section 271(d)(3) is a "novel question of law" which is beyond the Bureau's delegated authority.

Qwest is not alone in its belief that the Bureau exceeded its delegated authority in the *E911 Forbearance Order*. In a partial dissent to the Commission's imposition of Section 272 nondiscrimination requirements in the subsequent *NDA Forbearance Order* (14 FCC Rcd. 16252 (1999)), Commissioner Furchtgott-Roth observed the "it appears that the Bureau was acting independently in making this earlier legal interpretation [in the *E911 Forbearance Order*] as it does not cite any prior Commission-level order in support of its interpretation. Neither does the majority refer to any prior Commission-level conclusion on this legal issue. Thus, this inconsistency is the result, at least in part, of the Bureau's attempt to deal with a new and novel legal and policy issue without direction from the Commission. As I have stated on several recent occasions, the Bureau does 'not have authority to act on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.' (citing 47 C.F.R. § 0.291(a)(2)). The Commission's rules, expressly limit the general grants of delegated authority to the Bureaus to 'matters which are *minor or*

finding necessary as the Bureau observed since the MFJ Court had previously authorized the BOCs to provide E911 services.

In its *Order* partially granting U S WEST Communications' Forbearance Petition concerning whether non-local directory assistance ("NDA") had to be provided through a separate affiliate, the Commission found that NDA constituted the provision of in-region interLATA service and that U S WEST was authorized to provide the regionwide component of NDA by Section 271(g)(4).[29] In not distinguishing between services authorized under Section 271(g)(4) and those requiring prior authorization under Section 271(d)(3), the Commission had no trouble finding that it had the authority to forbear and "conclude[d] that section 272, read in conjunction with section 10, means that, if we find that the objectives set forth in section 10 may be satisfied by other means than enforcing section 272, then such a finding is persuasive evidence that enforcement of the separate affiliate requirements of section 272 is not necessary."[30] In all likelihood, the Commission did not distinguish between services subject to Sections 271(d)(3) and 271(g)(4) because it could not find a statutory basis for concluding that it had the authority to forbear with respect to applying Section 272's requirements to one group of services but not to the other.[31]

Even if the Commission were to determine that Section 272 is incorporated into Section 271(d)(3) by reference, such a decision in no way implies that the Commission is precluded from

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routine or settled in nature.' (citing 47 C.F.R. § 0.5(c))." *See NDA Forbearance Order*, 14 FCC Rcd. at 16291, Statement of Commissioner Harold Furchtgott-Roth, Dissenting in Part.

[29] *Id.* at 16263 ¶ 18, 16265 ¶ 23.

[30] *Id.* at 16269 ¶ 29.

[31] *See ex parte*, Letter from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, dated June 23, 2003, *Re: Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules*, CC Docket No. 96-149 at 7-8.

forbearing from applying or modifying certain regulations that were adopted after passage of the Act -- but prior to the BOCs having any actual experience in providing interLATA service through separate affiliates. As Verizon opined, forbearing from applying the OI&M regulations adopted under Section 272 would not result in forbearance from Section 271 in violation of Section 10(d).[32] Any interpretation of Section 10(d) that would prohibit the Commission from forbearing from applying regulations -- not statutory provisions -- would be overly-broad and an unreasonable construction of the Section 10(d) exception to the general rule requiring forbearance.

V. FORBEARANCE IS WARRANTED SINCE SECTION 10'S REQUIREMENTS ARE SATISFIED

A. The OI&M Restrictions Are Not Necessary To Ensure That Rates And Practices Are Just, Reasonable, And Not Unreasonably Discriminatory

The first statutory criterion for forbearance requires that the Commission determine whether the continued application of the OI&M rules are necessary to ensure that rates and

[32] "Section 271(d)(3)(B)'s reference to section 272 does not tie the Commission to any particular interpretation of section 272: that provision simply requires that an applicant's services be provided in compliance with the 'requirements of section 272.' The Commission may forbear from the OI&M regulations under section 272 while continuing to enforce section 271(d)(3)(B) in full: section 271(d)(3)(B) requires a 271 applicant to comply with whatever regulations the Commission at any given time finds appropriate under section 272. The Commission may change those regulations by rule, through forbearance, or otherwise over time: in any case, section 271(d)(3)(B) and the obligations thereunder are not eliminated." *See ex parte*, Letter from Ann D. Berkowitz, Project Manager-Federal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, dated June 23, 2003, *Re: Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules,* CC Docket No. 96-149 at 7.

Not surprisingly, AT&T disagrees with Verizon's analysis of the Commission's authority to forbear from applying Section 272 or rules adopted in implementing it. However, AT&T appears to acknowledge that the Commission has the authority to eliminate its OI&M rules through a rulemaking proceeding, as Verizon pointed out in its *ex parte*. *See ex parte*, Letter from David L. Lawson to Marlene H. Dortch, Secretary, FCC, dated July 9, 2003, *Re: Petition of Verizon for Forbearance from the Prohibition of Sharing Operating, Installation and Maintenance Functions Under Section 53.203(a)(2) of the Commission's Rules,* CC Docket No. 96-149 at 8.

practices are just, reasonable and not unreasonably discriminatory. Forbearance from applying the OI&M rules would not have a detrimental effect on interLATA long distance rates. These rates are set by market forces which are, by definition, competitive and not unreasonable. The Commission has already found that BOC Section 272 affiliates are non-dominant carriers.[33] As such, they do not have market power or the ability to control prices.

Forbearance from applying OI&M rules would allow Qwest's Section 272 affiliate to reduce its future costs (*i.e.*, once Qwest begins providing interLATA service using its own facilities) and to compete more effectively in the interLATA services market. Similarly, forbearance from the OI&M rules would not result in unjust or unreasonably discriminatory rates or practices by QC, Qwest's BOC. Both QC and Qwest's Section 272 affiliate should benefit from economies of scope and scale if they are allowed to perform OI&M functions for each other. In addition to reducing QCC's costs, forbearance should allow QC to operate more efficiently, which should be beneficial to QC's customers, and should not have a detrimental effect on QC's customer prices or practices. Earlier Commission concerns over cost misallocation/cross-subsidization have been largely alleviated, if not eliminated, by subsequent price cap reforms which severed the link between costs and exchange access prices. Furthermore, the likelihood of QC engaging in discriminatory practices would be no greater than in the absence of forbearance. Even with a grant of this Forbearance Petition, all of Section 272's nondiscrimination safeguards -- including Sections 272 (c) and (e) -- would remain in place.[34]

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[33] *LEC Classification Order*, 12 FCC Rcd. at 15802 ¶ 82.

[34] For example, Section 272(e)(1)-(2) provides that BOCs "shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates," and the BOC must make "any facilities, services, or information

In addition to Section 272's safeguards, the Commission has numerous other statutory and regulatory tools available -- including Sections 201 and 202 of the Act and Part 32 -- to ensure that forbearance does not result in unjust or unreasonable rates and practices or unreasonable discrimination. Therefore, the Commission should find that the first forbearance criterion is met.

B. The OI&M Restrictions Are Not Necessary To Protect Consumers

The second statutory criterion for forbearance requires that the Commission determine whether enforcement of the OI&M rules is necessary for protection of consumers. As shown in the previous section, the OI&M rules are not necessary to ensure that Qwest's rates and practices are just, reasonable and not unreasonably discriminatory. In fact, OI&M forbearance should benefit consumers in two ways: (1) by allowing Qwest to compete more effectively in the market for in-region interLATA services; and (2) by allowing Qwest to streamline OI&M functions for its interLATA customers (thereby, improving customer service). In and of themselves, the OI&M rules provide no protections or benefits to customers. As Ms. Stegora Axberg, Qwest's Senior Vice-President NNS, points out, the existing rules harm customers by lengthening installation and repair times (which impose additional costs on customers over and above those imposed on Qwest as a service provider). As such, the Commission should find that the second criterion is satisfied.

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concerning its provision of exchange access" that it provides to its affiliate available to other providers of interLATA services on the same terms and conditions. Thus, Section 272(e)(1) will continue to impose an absolute prohibition against QC fulfilling requests for telephone exchange service or exchange access for itself or its Section 272 affiliate more quickly than it fulfills such requests for competing providers. Moreover, QC may not discriminate between its Section 272 affiliate and any other competing long distance provider with respect to "facilities, services, or information concerning [QC's] provision of exchange access." *See* 47 U.S.C. § 272(e)(1)-(2).

C. Forbearance From Applying The OI&M Restrictions Is Consistent With The Public Interest

The third statutory criterion for forbearance requires that the Commission determine whether forbearance from applying the OI&M restrictions is consistent with the public interest. In making this public interest determination, the Commission considers whether forbearance "will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."[35]

As demonstrated above, elimination of the OI&M prohibition would reduce Qwest's costs, improve customer service, and allow Qwest to compete more effectively in the interLATA long distance market. Qwest would be able to avoid maintaining duplicate systems and work forces for OI&M functions. Furthermore, forbearance would allow Qwest to engage in end-to-end network monitoring and testing. These benefits should increase network reliability and the overall quality of service provided to Qwest's interLATA customers. Thus, not only will forbearance benefit Qwest by reducing Qwest's OI&M costs, it will enhance competition in the interLATA services market. As such, the Commission should find that forbearance is consistent with the public interest.[36]

[35] 47 U.S.C. § 160(b).

[36] *See NDA Forbearance Order*, 14 FCC Rcd. at 16278 ¶ 48.

VI. CONCLUSION

As demonstrated in the forgoing sections of this Petition, the Commission should find that the three statutory criteria that Congress established for forbearance in Section 10 of the Act have been satisfied and that the OI&M restrictions are no longer necessary. As such, Qwest requests that the Commission grant this Petition.

Respectfully submitted,

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October 3, 2003

Before the
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Washington, DC 20554

In the Matter of	)	
	)	
Petition of Qwest Services Corporation for	)	
Forbearance From the Prohibition of	)	CC Docket No. 96-149
Performing Operating, Installation, and	)	
Maintenance Functions	)	
Under Section 53.203(a)(2)-(3) of the	)	
Commission's Rules	)	

Declaration of Pamela J. Stegora Axberg

1. My name is Pamela J. Stegora Axberg. I am Senior Vice-President for Qwest's National Network Services ("NNS"). In that capacity, I am responsible for overall management of engineering, operations, and network reliability of Qwest Communications Corporation's ("QCC") national voice, video and data networks. More than 2,500 employees report to me in fulfilling these responsibilities. I have been employed by Qwest and U S WEST for 18 years. During that time I have held numerous positions in network operations including data services, network planning, engineering operations and product development. Prior to assuming my current position in May 2002, I was Senior Vice-President over Qwest Corporation's ("QC") Eastern Region operations which included responsibility for delivering telecommunications services to customers in Iowa, Minnesota, Nebraska, North Dakota and South Dakota and overall responsibility for network reliability for QC's 14-state service area. I received a bachelor of arts degree in mathematics from the College of St. Catherine and a master of business administration from the University of Minnesota.

2. The purpose of this declaration is to describe the type of savings that would accrue to Qwest if the Federal Communications Commission's ("Commission") rules regarding the performance of operating, installation and maintenance ("OI&M") functions by Bell Operating Companies ("BOCs") and their Section 272 affiliates were lifted and Qwest is allowed to provide OI&M functions in the most efficient manner.

3. Currently, QC and QCC are not permitted to perform OI&M functions for each other under the Commission's existing rules. To date, this has had little impact on Qwest's costs since Qwest's long distance (*i.e.*, Section 272) affiliate, Qwest LD Corp. ("QLD"), has provided interLATA service by reselling the long distance voice services of another carrier. However, this will change in the near future when QCC is designated as Qwest's Section 272 affiliate. Then, QCC will be able to provide a wide range of in-region interLATA services over its own network.

4. Once Qwest begins to provide in-region and out-of-region interLATA services on an integrated basis through QCC, the OI&M restrictions will impose a significant amount of unnecessary costs on QCC and impair QCC's ability to serve its customers in the most efficient manner. Both Qwest and its interLATA customers will suffer if QCC is prohibited from purchasing OI&M functionality from QC for mass market customers and QC is not allowed to purchase OI&M functionality from QCC for a relatively small number of national accounts.

5. With the elimination of the OI&M restrictions, efficiencies will arise because Qwest will be able to: (1) eliminate duplicative procedures and work forces in QC and QCC in the installation, design, and testing of customer orders; (2) use a single Qwest entity (either QC or QCC) to provide end-to-end network monitoring; and (3) eliminate duplicative systems, procedures and work forces used in identifying and repairing service outages and interruptions.

6. The benefits to Qwest's interLATA customers from elimination of the OI&M restrictions are even more important than the direct cost savings to Qwest. Among other things, these benefits include: 1) the ability of Qwest to provide single integrated end-to-end communications solutions for customers; 2) a reduction in the number of "touchpoints" (contact points) necessary to meet customer requirements – thereby reducing installation and repair times for customers; 3) designation of a single number for customers to contact for service problems; 4) the elimination of duplicate testing by separate Qwest entities (*i.e.*, QC and QCC) of the same interLATA services; 5) greater likelihood that network capacity will be available when and where customers need it; and 6) an overall enhancement in the quality of service provided to Qwest's interLATA customers.

7. While elimination of the OI&M restrictions should allow Qwest to provide better customer service to all customers, removal of these restrictions is particularly important to satisfy the service needs of large business and government customers. These customers purchase a wide variety of sophisticated interLATA services and demand a single point of contact to resolve service problems. Their primary concerns are timely installation and repair with a minimum of downtime. In many instances, large business and government customers will refuse to deal with a carrier if the carrier cannot provide end-to-end network monitoring and guaranteed response times for addressing service outages.

8. In summary, continued imposition of the Commission's OI&M rules will result in delays in installing and repairing customers' services and impose unnecessary costs on both Qwest and its interLATA customers. This is particularly true for large business and government customers that have numerous locations and purchase a wide variety of sophisticated interLATA services.

I certify that the foregoing is true and correct to the best of my information and belief.

Executed on October 2, 2003.

Pamela J. Stegora Axberg
Senior Vice -President
Qwest National Network Services

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **PETITION FOR FORBEARANCE** to be filed with the Secretary of the FCC via ECFS and served via e-mail on the FCC's duplicating contractor Qualex International, Inc.

/s/ Richard Grozier
Richard Grozier

October 3, 2003

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